Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.

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Copyright Royalty Board
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In the Matter of	
Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV)	**Docket No. 14–CRB–0001–WR (2016–2020)**

RESPONSE OF GEORGE JOHNSON (GEO) TO PANDORA AND NAB'S OBJECTION TO MOTION OF GEORGE JOHNSON REQUESTING REFERRAL OF NOVEL MATERIAL QUESTION OF SUBSTANTIVE LAW TO THE REGISTER

George Johnson ("GEO") respectfully submits to Your Honors the following Response to Pandora and the National Association of Broadcaster's ("NAB") Objection to GEO's Motion Requesting Referral of a Novel Question of Substantive Law to the Register, October 30th. 2015.

17 U.S.C. §106 EXCLUSIVE RIGHTS

Section 106[1] says:

> Subject to sections 107 through 122, *the owner of copyright under this title has the exclusive rights to do and to authorize any of the following*:

(1) to reproduce the copyrighted work in copies or phonorecords;

(2) to prepare derivative works based upon the copyrighted work;

(3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

[1] https://www.law.cornell.edu/uscode/text/17/106

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Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (Web IV)	**Docket No. 14–CRB–0001–WR (2016–2020)**

MOTION OF GEORGE JOHNSON (GEO) REQUESTING REFERRAL OF MATERIAL QUESTIONS OF SUBSTANTIVE LAW

George Johnson ("GEO") respectfully submits to Your Honors the following "motion by participant" requesting referral of material questions of substantive law to the Register pursuant to 37 C.F.R. § 354.1(b)(2) which states that "any participant may submit a motion to the Copyright Royalty Judges (but not to the Register) requesting their referral to the Register of Copyrights a question that the participant believes would be suitable for referral under paragraph (a) of this section." GEO believes the following material questions are not procedural questions but novel material questions of substantive copyright and constitutional law.

DISCUSSION

Based on GEO's research, as a §114 and §115 music copyright creator for over 40 years, non-attorney and *pro-se* participant, it's clear that sound recording copyright protections were around long before CDs, computers, the internet, mobile telephones, mp3s, streams, webcasting, or even "federal protection" in 1972 for sound recordings under §114 — fundamentally protected in the "exclusive rights" enshrined in Article 1, Section 8, Clause 8 of the U.S. Constitution.

Of course, before 1972 federalization, American sound recordings were protected by common law and select states' copyright laws in California (and New York State) as used by The Turtles, *Flo & Eddie, Inc. v. Pandora Media, Inc.*, and *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*

Moreover, the 1976 Copyright Act also clarified that copyright is protected from the

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"moment of creation"[1]. But if that's true, that *copyright's legal protections really start at the moment of creation*, then it seems logical that the federal sanctioning of any copyright, additional "digital" categories of sound recordings, etc. may not be necessary and just adding an additional layer to what is already protected. Congresses' good intentions to help, turned into more control.

Especially, when looking at the 1909 and 1976 Acts, plus later "digital" versions in the Digital Performance Right in Sound Recordings Act of 1995 or the 1998 DMCA/United Nations WIPO Treaty and subsequent additions of those Acts, the *one theme they all have in common* is they're more concerned with the so called "public", "public good", "users" or the licensees, and *their interests* and *even protection,* while giving copyright creators a "fair" or "adequate return".

Most importantly, combine these arguments with the U.S. Constitution's supremacy clause and each individual American author's "exclusive right" in Article 1, Section 8, Clause 8, which recognizes their *natural right* to their writings, *natural right* to the fruits of their labor, and a *monopoly* on their work for a limited time which is *a property right,* additionally protected under the 5th Amendment like a piece of land, house, car, piano or Les Paul Custom guitar.

Then include the additional §106[2] layer of supposed "exclusive right" protections.

As former Register Ralph Oman was recently quoted concerning *natural rights* and *exclusive rights*, he asked what is, "*...the true nature of copyright—as an exclusive private property right,* **or** *as a limited right to be doled out stingily, riddled with exceptions and limitations, to be given away free-of-charge.*"? A perfect definition of all that is 37 C.F.R. 385.

American music copyright protections in general have been federalized since the early 1800's but all U.S. sound recordings are already federally protected since 1787 in the copyright clause of the U.S. Constitution, and really, all writings are protected by natural law *priori* to any federalization, and from the moment of creation. *So, are the exclusive rights found in the copyright clause of the Constitution and §106 being violated by Congress and the Office?*

REFERRAL

Based on the foregoing, GEO respectfully requests Your Honors seek interlocutory referral to the following precise legal and novel questions of substantive law to the Register:

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[1] http://www.copyright.gov/circs/circ15a.pdf

[2] http://www.copyright.gov/title17/92chap1.html#106

1. Is the rate setting process created by Congress in 1976 and facilitated by the Copyright Office a violation of the U.S. Constitution Article 1, Section 8, Clause 8 "exclusive right" to my copyrights and therefore, GEO's "natural rights" under the U.S. Constitution?

2. Is the rate setting process also in violation of GEO's 5th Amendment property right to control, own, profit, and exclude others from my property, my copyrights?

3. Is the rate setting process in violation of GEO's exclusive rights found in §106, 1 to 5?

4. Is the rate setting process and the exemptions and limitations for the "public" or "user" licensee in the 1909 Act, DMCA/ United Nation's WIPO Treaty, §801(b)(1), 37 C.F.R. 385, and various Congressional revisions to the Act since WIPO, violate the "exclusive rights" found in §106, 1 to 5, and more importantly in Article 1, Section 8, Clause 8 of the U.S. Constitution?

SUGGESTED BRIEFING SCHEDULE

In accordance with 37 C.F.R. § 354.1(b)(2)(i) which affords interested parties an opportunity to submit legal memoranda regarding a referral, and in consideration of the quickly approaching December 15th deadline, GEO respectfully suggests the following briefing schedule:

Initial briefs filed with the Judges: **November 9**
Responsive briefs filed with the Judges: **November 16**

GEO thanks Your Honors for your thoughtful consideration.

Respectfully submitted,

By: */s/ George D. Johnson*

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Dated: Friday, October 30, 2015

CERTIFICATION OF SERVICE

I, George D. Johnson, ("GEO") an individual and digital sound recording copyright creator, hereby certify that a copy of the foregoing (GEO) GEORGE JOHNSON'S MOTION REQUESTING REFERRAL OF A NOVEL MATERIAL QUESTION OF SUBSTANTIVE LAW has been served this 30th day of October, 2015 by electronic mail upon the following parties:

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